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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 LUIS PINEDA, et al.,
4 Plaintiffs,

5 v. 15 CV 3774 (GBD)

6 FRISOLING, INC., et al.,
7 Defendants.

8 -----x
9 New York, N.Y.
10 March 16, 2017
11 12:30 p.m.
12 Before:

13 HON. GEORGE B. DANIELS,
14 APPEARANCES

15 MICHAEL FAILLACE & ASSOCIATES, P.C.
16 Attorneys for Plaintiffs
17 BY: GERALD ELLIS
18 JOSHUA S. ANDROPHY
19 KUBLANOVSKY LAW, LLC
20 Attorneys for Plaintiffs
21 BY: EUGENE D. KUBLANOVSKY
22 ALLISON MATTERA CHARLES
23
24 Also present: G. Eugene Alvarez, Spanish language interpreter
25

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1 (In open court)

2 MR. ELLIS: One of the defendants' witnesses, Fernando
3 Ortiz, is here. I ask that he be in the witness room.

4 MR. KUBLANOVSKY: No objection.

5 THE COURT: You can wait in the witness room.

6 Is that Mr. Ortiz.

7 MR. ELLIS: Yes.

8 THE COURT: Show Mr. Ortiz where the witness room is.

9 How long do you think you will have with this witness?

10 MR. KUBLANOVSKY: Probably 15, 20 minutes.

11 MR. ELLIS: Redirect of five to 10.

12 MR. KUBLANOVSKY: I tried to cut down given the time
13 we have before lunch.

14 THE COURT: Does Mr. Ortiz need to wait around? We're
15 not going to see him before 2:00?

16 MR. ELLIS: Right. Before Mr. Ortiz, we have Eddie
17 Jaquez who is another one of the plaintiffs.

18 THE COURT: He doesn't have to wait in the witness
19 room. He can come back this afternoon.

20 MR. KUBLANOVSKY: I will go speak with him.

21 THE COURT: Have him come back 2:30. I don't think
22 we'll get to him before then.

23 MR. ELLIS: I think that's right.

24 Second chair, Joshua Androphy, had a conference in the
25 Eastern District. He is on his way after that.

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Pineda - cross

1 THE COURT: Sure.

2 CROSS-EXAMINATION (Cont'd)

3 BY MR. KUBLANOVSKY:

4 Q. Good afternoon, Mr. Pineda.

5 A. Good afternoon.

6 Q. You recall yesterday we were discussing about your
7 employment at Piccolo Angolo.

8 How many hours per week did you work at the
9 restaurant?

10 A. It could not be exact because every day it was different.

11 Q. On average how many hours a day did you work?

12 A. I believe 48, six days.

13 Q. How long would it normally take you to clean up your work--
14 I withdraw that question.

15 Did you have a workstation at the restaurant?

16 A. Yes. The wine section. It was a small bar.

17 Q. How long would it normally take you to clean up your work
18 area each evening before you would leave the restaurant?

19 A. As I stated yesterday about half an hour.

20 Q. After you finished cleaning up your work area, what would
21 you do next?

22 A. To wait so that the money would be given to me.

23 Q. By "money," you mean the wages you were paid each day plus
24 any tips calculated before you left; correct?

25 A. It is just one. Only one money that was given to me.

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Pineda - cross

1 Q. Isn't it correct, sir, that sometimes you would leave
2 before the tips were distributed and you were given that the
3 following day?

4 A. That is correct because they would never give it to me
5 early. I had to wait, to wait, to wait, and sometimes I
6 wouldn't get it.

7 Q. Sir, if you would get it the next day when you would come
8 in, why did you have to wait?

9 A. Because that is the way I was paid from the beginning. In
10 other words, Renato would pay me like so and I didn't see a
11 reason for me to have to wait until the next day.

12 I did not say Renato. I want to be corrected. When
13 he was still living, I was paid daily.

14 Q. When would you normally finish your shift at the
15 restaurant?

16 A. When they would say that it was closed.

17 Q. When would that be?

18 A. When they said it was closed. When they thought it was
19 closed and they said so, then we would go home.

20 Q. Let's take Tuesday through Thursday. The restaurant was
21 open between 5:00 p.m. and 10:30 p.m. When would you normally
22 finish your shift Tuesday through Thursdays?

23 A. First, it was not 10:30. It was always later.

24 Furthermore, even when there were no people, they would not
25 allow us to leave. So it was always when they said it was

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Pineda - cross

1 closed. There was no schedule.

2 Q. Did you work on Superbowl Sunday prior to February 7th,
3 2015?

4 A. I cannot recall well, but I think so, yes.

5 Q. Isn't it true that business was really slow on that date
6 and the restaurant closed at around 8:00?

7 A. That is true. The Superbowl was the only exception that
8 always happened. Every year, not only that year.

9 Q. That was the only exception.

10 So there was no other time that the restaurant ever
11 closed early?

12 A. That I can recall, no.

13 Q. Tuesday through Thursday you testified that you likely left
14 after 10:30. Can you give a better estimate of how long you
15 would have stayed after 10:30?

16 THE INTERPRETER: I missed what you said at the
17 beginning, counsel.

18 Q. I believe you testified from Tuesday to Thursday. Can you
19 give a better estimate how long you left after 10:30?

20 A. I cannot say something exactly because it all depended on
21 the mood they were in. Sometimes they were not in a good mood.
22 So they would have us there even if there was nothing to do.
23 We were just standing there and it depended always on what they
24 said.

25 Q. On the weekends, beginning on Friday night and then -- I

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Pineda - cross

1 will not talk about Sunday yet. Let's focus on Saturday and
2 Sunday. Would you work later on Friday and Saturday because
3 the restaurant was open until 11:00 p.m. than you would work
4 Tuesday to Thursday?

5 A. I did not understand the question.

6 Q. I will rephrase.

7 On Fridays or Saturdays the restaurant was open until
8 11:00 p.m. Would you leave earlier or later than usual on
9 Fridays and Saturdays as opposed to Tuesdays and Thursdays?

10 A. Logically, later.

11 Q. So by the same logic on Sunday because the restaurant
12 closed earlier than 11:00 p.m. -- I believe it closed at 10:00
13 p.m. -- wouldn't you leave earlier on Sundays?

14 A. Earlier than Saturday and Friday, yes.

15 Q. Did you ever complain about your job to Renato Migliorini
16 while he was alive?

17 A. What are you referring about when you say complain about
18 the job?

19 Q. I am asking did you have any complaints about your job that
20 you brought up with Renato Migliorini during the time he was a
21 live?

22 A. About the job, never; but regarding the way I was treated,
23 yes.

24 Q. What about your pay, did you ever complain to him about how
25 you were paid?

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Pineda - cross

1 A. Yes. Sometimes.

2 Q. What about the hours you worked and the work schedule? Did
3 you ever bring those complaints to his attention?

4 A. Regarding the hours, no.

5 Q. What about after Renato Migliorini died, did you ever
6 complain to Peter Migliorini about your job? Did you have any
7 of the same complaints that you brought to his attention?

8 A. Yes. As I said yesterday, we were there with Fernando but
9 he said nothing. All he did is he moved his head.

10 Q. I am not sure I understand your response. Let me reask the
11 question.

12 Did you have any complaints that you made to Peter
13 Migliorini about your job after Renato Migliorini passed away?

14 A. Yes. I did have some complaints before him.

15 Q. Sir, why did you leave the restaurant on February 7th,
16 2015?

17 A. I want to clear something. I did not leave it. Peter laid
18 me off.

19 Q. Did Mr. Migliorini tell you individually that you were laid
20 off?

21 A. If possible could I say something as to how things happened
22 that night?

23 Q. Sir, I would appreciate if you just answer the question
24 that I asked.

25 The question was: Did Mr. Migliorini tell you

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Pineda - redirect

1 individually that you were laid off?

2 A. Yes. Because he came in and insulted me first and then I
3 complained to him, What is the problem with me, as I was not
4 involved. And he told me, You are all the same. If you like
5 it, well. If not, you know what you can do. And he told us
6 all, All of you are now laid off.

7 Q. Isn't it true before you all left that Mr. Migliorini told
8 each of you, with the exception of Mr. Jaquez, that you still
9 had a job the next day and you could come back?

10 A. No. It's happened in the opposite way. He said that he
11 would not leave. He was going to call the police.

12 Q. Sir, did you ever return to the restaurant?

13 A. Yes.

14 Q. Why did you return to the restaurant?

15 A. In order to collect the money that was my share for that
16 day.

17 Q. Were you paid your wages for that day? Did you collect
18 your money?

19 A. Yes.

20 MR. KUBLANOVSKY: No further questions.

21 THE COURT: Any further questions?

22 MR. ELLIS: Yes, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. ELLIS:

25 Q. Just very quickly. Do you know for your daily wage of 65

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Pineda - redirect

1 to \$70 per day what portion of it was wages and what portion of
2 it was tips?

3 A. No. Because they have never told me so.

4 Q. Did you know on any given day how much business the
5 restaurant did?

6 A. Exactly, no. A lot was made because the restaurant was
7 always full especially when Renato was alive.

8 Q. On any given day did you see how much tips the restaurant
9 made?

10 A. Never. Because they never allowed me to touch the moneys
11 for tips.

12 Q. You discussed Superbowl Sunday and how it was slow. Did
13 your pay decrease on Superbowl Sunday or was it the same as any
14 given day?

15 A. It was always the same.

16 Q. Busy day, slow day, your pay was always the same?

17 A. Yes. That is why yesterday I said between 65 and 70. It
18 was always the same. It doesn't matter whether it was busy or
19 not busy.

20 MR. ELLIS: Thank you. No further questions, your
21 Honor.

22 THE COURT: Anything further?

23 MR. KUBLANOVSKY: Just two quick questions.

24 THE COURT: Sure.

25 RECROSS-EXAMINATION

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Pineda - recross

1 BY MR. KUBLANOVSKY:

2 Q. Sir, did you ever receive tips individually from customers
3 at the restaurant?

4 A. Yes. I mentioned that. And on account of that, I also had
5 problems with Maria.

6 Q. Sir, didn't you keep those tips that you received?

7 A. Yes. Because the people would tell me that was for me.

8 Because they knew that -- they knew -- if they knew, then they
9 were not going to give it to me.

10 Q. Sir, in your calculation of the percentage of tips that you
11 received, are you including the individual tips that you
12 received from customers?

13 A. No.

14 MR. KUBLANOVSKY: Thank you. No further questions.

15 MR. ELLIS: Nothing further.

16 THE COURT: Thank you, sir. You are excused.

17 (Witness excused)

18 THE COURT: Let's go ahead and take the lunch break.

19 We'll continue at 2:10 and see how far we can get.

20 (Luncheon recess)

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Jaquez - direct

1 A F T E R N O O N S E S S I O N

2 2:20 p.m.

3 THE COURT: Mr. Ellis, are you ready for your next
4 witness?5 MR. ELLIS: Yes, your Honor. The plaintiffs call
6 Eddie Jaquez.

7 THE COURT: Swear in the witness.

8 EDDIE JAQUEZ,

9 called as a witness by the Plaintiffs,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ELLIS:

13 Q. Please state your name for the record.

14 A. My name is Eddie Francisco Jaquez.

15 Q. Did you ever work at a place called Piccolo Angolo?

16 A. Yes. I did work at that company.

17 Q. When did you begin working at Piccolo Angolo?

18 A. That I can remember I started to work on May 29th, 2011.

19 Q. Why do you remember the date so precisely?

20 A. Because is Mother's Day in my country.

21 Q. When did you stop working at Piccolo Angolo?

22 A. February 7th, 2015.

23 Q. What was your job when you worked at Piccolo Angolo?

24 A. Cook.

25 Q. Who was your boss?

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Jaquez - direct

1 A. First Renato. And then after Renato died, Peter.

2 Q. Who hired you at Piccolo Angolo?

3 A. Renato.

4 Q. How did you come to work there?

5 A. I do not understand the question.

6 Q. How did you get the job?

7 A. Oh, my brother. He is a chef. He has been a chef for 23
8 years. And he was a close friend to Renato and he recommended
9 me to Renato.

10 Q. Did Peter work there when you started working in 2011?

11 A. Yes, sir.

12 Q. Did Maria Migliorini work there as well?

13 A. Yes sir.

14 Q. How many days a week did Peter work when you first started
15 in 2011?

16 A. About three days per week.

17 Q. How many days a week did Maria work?

18 A. Three. Three days approximately that I can remember.

19 Q. Did each work a different three days, for Peter and Maria,
20 or did they overlap?

21 A. Peter worked Thursday, Fridays, and Saturdays. And his
22 sister as far as I can recall, she used to work that same
23 schedule. And when the father lived, he would cover up. So
24 when she would arrive, he could go back home.

25 Q. So are you saying they would trade off so that Maria and

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Jaquez - direct

1 Renato were not there at the same time?

2 A. No. Only Renato would leave and they would remain.

3 Q. So when Renato was still alive, would he come to the
4 restaurant and leave and then Peter or Maria were in charge?

5 A. Yes, sir.

6 Q. How often was that that Renato would leave Peter or Maria
7 in charge of the restaurant?

8 A. All the days from Tuesday to Sunday, except with Sundays.

9 Peter did not work on Sundays because that was his day off.

10 Q. So when Renato wasn't at the restaurant, who was in charge?

11 A. Peter. Peter and Maria. Excuse me.

12 Q. What time of day did you arrive to work?

13 A. When I started in 2011, I started coming in at 2:00 in the
14 afternoon without having an hour for finishing leaving.

15 Q. Sir, can you explain what you mean by that? What do you
16 mean by without finishing leaving?

17 A. So as to end. When I would leave from my work. Excuse me.
18 When they would tell me for me to leave the kitchen. When they
19 would tell me it was closed.

20 Q. Are you talking about your end time every day?

21 A. Yes, sir.

22 Q. I am just asking about what time you arrived.

23 Let's go back a step.

24 How many days a week did you work?

25 A. Six days.

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Jaquez - direct

1 Q. Would you arrive at the same time every day?

2 A. Yes, sir. For the first two years.

3 Q. What happened after two years?

4 A. I started to come in at 3:00 in the afternoon.

5 Q. Why did your schedule change?

6 A. Because I spoke to Renato. Because when I started at the
7 beginning, he told me, You come in at 2:00 in the afternoon
8 until you learn the system and the ingredients that we have on
9 the menu so then you can become aware of the system of the
10 business quicker and you learn the business.

11 Q. So is it fair to say then that your schedule changed once
12 you learned the system?

13 A. After the two years.

14 Q. Did you have to punch a clock or write down your time when
15 you would come in and leave?

16 A. Nothing like that.

17 Q. Did you receive breaks?

18 A. Never.

19 Q. Did you eat while you worked?

20 A. At the same time as I was working, I would be eating little
21 by little.

22 Q. What time would you leave work every day?

23 A. We did not have a specific time. We would leave when he
24 would say that it was closed or he would send the ticket.

25 Q. When who would say it was closed?

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Jaquez - direct

1 A. Either Peter or Maria would send a ticket. They would send
2 a ticket from the machine and there it said the kitchen is
3 closed.

4 Q. What would you do once you got that ticket or once they
5 gave you the order that the kitchen was closed?

6 A. I started to prepare my line in order to clean it and close
7 it to place plastic on it and to close my station.

8 Q. How long did that all take?

9 A. It would depend.

10 Q. If you had to estimate, how much time?

11 A. About 40 minutes.

12 Q. About how many orders a day would you prepare as a cook?

13 A. Me as a cook as far as I would understand it and what I
14 would cook, for more than a hundred plus persons every day.

15 Q. Do you know who Angel Guayllasac is?

16 A. My workmate. Fellow worker.

17 Q. Was he your boss?

18 A. No, Peter.

19 Q. When tickets would come into the kitchen, how did you and
20 Angel divide your work?

21 A. It would depend. If he was very busy -- if he was very
22 busy when the ticket would arrive, I would call out the ticket
23 orders to him. In the same manner he would do the same for me.

24 Q. How many people worked in the kitchen?

25 A. In the kitchen? The kitchen, three of us worked.

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Jaquez - direct

1 Q. Who are those three people who worked in the kitchen?

2 A. Angel, Israel, and the dishwasher Robinson.

3 Q. Who supervised you on a daily basis?

4 A. When I would come in, Renato. When Renato left, Peter.

5 Q. Can you turn to Tab 5 in the plaintiffs' book in front of
6 you.

7 Do you recognize these documents at Tab 5.

8 Do you recognize the documents at Tab 5?

9 THE INTERPRETER: If I may, let me double-check that
10 is he looking at the proper document.

11 MR. ELLIS: May I approach?

12 THE COURT: Yes.

13 THE INTERPRETER: I was correct. Not the right one.

14 THE WITNESS: Thank you.

15 MR. ELLIS: Let the record reflect that the witness
16 was looking at Tab 4.

17 BY MR. ELLIS:

18 Q. So do you recognize these documents at Tab 5?

19 A. Yes, sir.

20 Q. Can you describe what these documents are?

21 A. For me this is a nonvalid check that is nonnegotiable.

22 Q. Who gave you these documents?

23 A. Mr. Peter.

24 Q. Did he give you these documents when he would give you your
25 paycheck?

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Jaquez - direct

1 A. I was never paid with a check.

2 Q. How were you paid?

3 A. In cash.

4 Q. How much were you paid?

5 A. 400 pesos.

6 Q. Pesos or dollars?

7 A. Dollars.

8 Q. You were paid \$400 every day? Per week? Per month?

9 A. Weekly.

10 Q. Were you always paid \$400 per week?

11 A. Yes, sir.

12 MR. ELLIS: Your Honor, I move that Plaintiffs' Exhibit 5 be moved into evidence.

14 THE COURT: Any objection?

15 MR. KUBLANOVSKY: No objection.

16 THE COURT: It will be admitted into evidence.

17 (Plaintiffs' Exhibit 5 received in evidence)

18 BY MR. ELLIS:

19 Q. Can you turn to Tab 7.

20 A. Here.

21 Q. Do you remember the document at Tab 7?

22 A. Yes, sir.

23 Q. There is actually two documents. Can you describe these?

24 A. Yes. This is the paper they would provide to me so that I could fill out the 2 W for my taxes.

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Jaquez - direct

1 MR. ELLIS: Your Honor, I move Plaintiffs Exhibit 7 be
2 admitted into evidence.

3 THE COURT: Any objection?

4 MR. KUBLANOVSKY: No objection.

5 THE COURT: Received.

6 (Plaintiffs' Exhibit 7 received in evidence)

7 BY MR. ELLIS:

8 Q. Who paid you every week?

9 A. When Renato was alive, I was paid by Renato, Peter or
10 Maria. Either one of the three of them, but then towards the
11 end Peter paid.

12 Q. Were you ever given any written document along with your
13 pay?

14 A. No.

15 Q. Were you ever given a document when you were hired
16 explaining how you would be paid?

17 A. No. Verbally.

18 Q. Who explained it to you verbally?

19 A. Renato.

20 Q. You said that Peter Renato or Peter or Maria would pay you.
21 How did they know how much to pay you?

22 A. Because their father would let them know about it.

23 Q. Did you ever complain to anybody about your pay?

24 A. No.

25 Q. Did you ever complain to anybody about your hours?

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Jaquez - direct

1 A. Yes, with Renato before he died. Because his son -- when
2 Peter took over the business, he increased very much the time
3 of closing. We never had enough time to close.

4 Q. What did you tell Peter when you complained about the
5 closing time?

6 A. No, no, no. I told Renato, not to Peter.

7 Q. What did you tell Renato?

8 A. That why if when I entered into a contract with him, a
9 verbal one, he told me that my schedule was that I would leave
10 at 11:30 from the kitchen.

11 Q. Was that true? Did you end up leaving every day at 11:30
12 from the kitchen?

13 A. No. With exception of some Sundays when we would close
14 earlier and Superbowl.

15 Q. Did you ever complain to Peter about your working
16 conditions?

17 A. The only thing I complained about regarding the kitchen was
18 during the summer because it was very, very, very hot and we
19 could not stand the temperature, the cooks and me.

20 Furthermore, sometimes someone started bleeding from
21 the nose because it was so hot.

22 Q. Who was that that started bleeding?

23 A. Angel.

24 THE INTERPRETER: Can someone instruct him to wait
25 until I finish the interpretation?

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Jaquez - direct

1 THE COURT: You can so instruct him.

2 THE WITNESS: Pardon.

3 THE INTERPRETER: He is apologizing.

4 Q. Now, you said that after Renato died, your hours increased
5 under Peter?

6 THE INTERPRETER: Repeat, please.

7 Q. You said after Renato died, Peter increased the hours that
8 it stayed open?

9 A. Yes, sir.

10 Q. How much did he increase the hours that the restaurant
11 stayed open?

12 A. There wasn't a specific hour for closing.

13 Q. Did you complain to Peter about that?

14 A. He even -- furthermore, he said a word to all of us, my
15 fellow workers, that he was the emperor at Piccolo Angolo and
16 that we had to do what he would say and leave when he would say
17 so.

18 Q. When was that conversation?

19 A. He would say it on several occasions. It wasn't one
20 specific day. When he was in a bad mood, he would say that.

21 Q. Did you receive tips?

22 A. Yes. Once I received a tip.

23 Q. Only once?

24 A. From one client.

25 Q. But you weren't a regularly tipped employee?

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Jaquez - direct

1 A. No, sir.

2 Q. Did you see how the tips were handled by the restaurant?

3 A. Yes.

4 Q. I am going to remind you again to wait until the translator
5 is finished interpreting the question.

6 A. Sorry.

7 Q. Who handled tips at the restaurant?

8 A. Maria and Peter.

9 Q. Did you ever see Peter steal tips from the tip pool?

10 A. I never saw Mr. Peter steal anything.

11 Q. Did you see Maria steal tips?

12 A. Yes, sir. I did see her several times.

13 Q. How many times?

14 A. From the time I started all -- almost every day.

15 Q. What would you see her do?

16 A. I had a small metal box in there. She would put the tips
17 inside of there and then at times the brother was making up the
18 numbers from the cash register.

19 THE INTERPRETER: Excuse me. Please repeat. I might
20 not have translated properly.

21 MR. ELLIS: Can the court reporter read my last
22 question.

23 (Record read)

24 A. When she would take the box and she would go to the back
25 part to the kitchen by my side, I would see her when she would

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Jaquez - direct

1 take the money and she would put it inside her pocket.

2 Q. Did you see her distribute tips to the tipped employees
3 Luis and Fernando?

4 A. No. That I didn't see. That was somethings that were
5 theirs.

6 Q. During the time that Renato was still alive, what was his
7 relationship like with Peter?

8 A. It was a relationship that sometimes it would confuse me.

9 Q. Why would it confuse you?

10 A. Because of the way that the son would treat the father.

11 Q. How is that?

12 A. He would discriminate him.

13 MR. KUBLANOVSKY: I am going to object to this. I
14 don't see where it is going.

15 THE COURT: Are you going somewhere that is relevant
16 to the claim?

17 MR. ELLIS: It is relevant to the claim that Peter was
18 an employer under the meaning of the FLSA.

19 THE COURT: I am not sure if the meaning of that
20 question is a definition of an employer.

21 MR. ELLIS: We're talking about a small family
22 business and I think the relationship amongst the family
23 members insofar as defendants' claim that during the time that
24 Renato Migliorini ws alive, he was just an employee and that he
25 had nothing to do with the functioning of the business despite

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Jaquez - direct

1 the fact that he was a corporate officer.

2 THE COURT: I haven't heard any answer yet that has
3 anything to do with his being an employee or a boss. That
4 wasn't the question and that wasn't the answer. If you want to
5 inquire what his relationship was with regard to his being an
6 employer, you can ask him. How he treated the father wouldn't
7 define whether he is an employer or not.

8 MR. ELLIS: Fair enough.

9 BY MR. ELLIS:

10 Q. During the time that Renato was alive, was Peter just a
11 regular employee?

12 A. For me, no.

13 Q. How would you describe Peter during the time that Renato
14 was still alive for you?

15 A. For me? For me it was that practically he was the one who
16 would take all of the decisions pertaining to the restaurant.

17 Q. Even during the time that Renato was still alive?

18 A. Yes.

19 Q. During the time that Renato was still alive, was Maria just
20 a regular employee?

21 A. Peter and Maria would order us just the same way as any
22 other boss.

23 MR. ELLIS: One second your Honor.

24 (Pause)

25 Q. During the time that Renato was still alive, did you ever

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Jaquez - direct

1 hear him argue with Peter about the business?

2 A. Yes.

3 Q. What did you hear?

4 A. When Peter would arrive during the afternoon, he would yell
5 to his father for him to get out because he was ruining --

6 MR. KUBLANOVSKY: Objection as to relevance.

7 THE COURT: He can finish answering.

8 A. Yell to him to get out because he was ruining the business
9 because his father was a very complacent person with the
10 clients and he would always treat the clients very nicely. A
11 little bit more. Sometimes he would become so aggressive that
12 he would punch against the wall with his fist.

13 MR. KUBLANOVSKY: Your Honor, I am going to renew the
14 objection.

15 THE COURT: I will sustain the objection as to the
16 last comment and strike that.

17 MR. ELLIS: One more line, your Honor.

18 Q. When you saw Maria steal tips, did she take all of the tips
19 or just some of them?

20 A. They were quite a bit when she would do that. I would see
21 that because it was in her hand and I could see her hand like
22 so and then she would place it inside her pocket.

23 Q. Did you ever tell the other employees she was doing that?

24 A. No. I made no commentaries because it wasn't my -- it
25 wasn't for me to consent because I was afraid of losing my job.

h3g6pin22

Jaquez - cross

1 THE INTERPRETER: Verbatim as he stated in Spanish.

2 MR. ELLIS: No further questions.

3 CROSS-EXAMINATION

4 BY MR. KUBLANOVSKY:

5 Q. Good afternoon, Mr. Jaquez.

6 A. Good afternoon.

7 Q. Sir, how many hours did you work at the restaurant per
8 week?

9 A. Tell the man that I am not answering that. I am not giving
10 him a bad answer. He as Peter's attorney knows. He already
11 knows the hour when I would come in and I would leave.

12 Q. Sir, please, answer the question.

13 How many hours a week did you work at the restaurant?

14 A. Depending as there was not a specific time for leaving as I
15 explained to my attorney.

16 Q. Sir, how many hours did you work at the restaurant?

17 MR. ELLIS: Objection. In total? It is unclear.

18 THE COURT: Overruled. He can answer it in any way he
19 understands.

20 A. If I calculate about 10 to 12 hours from about 10:30 to
21 11:00. From 10 and a half hours to 11 hours.

22 Q. So how many hours per week since you calculated did you
23 work?

24 A. 60. 60 and some. If I am not making a mistake, if I am
25 calculating correctly 60 or around there.

h3g6pin22

Jaquez - cross

1 Q. How much were you paid again per week?

2 A. \$400 as I said to my lawyer.

3 Q. Are you aware that in the joint pretrial order that was
4 submitted in this case by counsel for the parties, your
5 counsel, that it states that you worked approximately 54 hours
6 a week and were paid a fixed salary of \$425 per week?

7 A. No. They would always pay me 400 pesos per week.

8 Q. So what I just stated was incorrect?

9 A. No. 400.

10 Q. Sir, can you please turn to Tab A in plaintiffs' book.

11 THE COURT: Plaintiffs' or defendants'?

12 MR. KUBLANOVSKY: Defendants'. I apologize.

13 Q. Sir, do you recognize this document?

14 A. That was from the first attorney -- from the attorney.

15 Q. Do you recognize it as the complaint your attorney filed in
16 this action?

17 A. I did not understand the question. It is the first time
18 that I have seen this document.

19 Q. It is? Do you understand this is a complaint that has been
20 filed on your behalf in this case?

21 A. Yes. I am looking at it.

22 Q. Do you understand this contains your allegations against
23 defendants in this action?

24 A. Yes.

25 Q. Can you please turn to page 5. I will ask you to look at

h3g6pin22

Jaquez - cross

1 paragraph 23 on that page. In the second sentence do you see
2 where it says, Plaintiff Jaquez improperly received his
3 compensation at a rate of \$425 per week?

4 A. No. 400.

5 Q. So that is not correct?

6 THE COURT: Do you want an answer to that question?

7 MR. KUBLANOVSKY: I am sorry.

8 A. No. That is not correct because I told my attorney from
9 the beginning that I was paid 400 cash. Excuse me.

10 Q. Sir, isn't it true you were actually paid \$725 per week?

11 A. Well, tell him to show me a document where thereby they can
12 evidence that they paid me \$725. If it would have been so, I
13 would still be working with that company.

14 Q. Sir, I asked you isn't it true you were paid \$725 per week?

15 A. But tell him that I just told him that it was \$400 in cash.

16 Q. You stated earlier that you entered a verbal agreement with
17 Renato Migliorini; correct?

18 A. Yes.

19 Q. And did that agreement concern how much you were to be paid
20 in the hours you would work at the restaurant?

21 A. He gave me 400 pesos -- dollars in cash.

22 Q. That wasn't my question, sir. My question was if the
23 agreement that you entered into with Renato Migliorini was for
24 the payment of wages and the hours you worked at the
25 restaurant?

h3g6pin22

Jaquez - cross

1 A. He told me that he was going to pay me \$400, and my
2 schedule for coming in well.

3 Q. That was part of that agreement that you had with
4 Mr. Migliorini, that verbal agreement; is that correct?

5 A. No, no, and no again. I did not understand.

6 Q. I am just trying to understand what was the verbal
7 agreement you had with Mr. Renato Migliorini. So my question
8 to you was whether that agreement that you had with Renato
9 Migliorini included how much you would be paid and what hours
10 you would work?

11 A. Yes, sir.

12 Q. I believe you testified earlier that you arrived at the
13 restaurant at the beginning when you started working there at
14 around 2:00 p.m.; is that correct?

15 A. Yes, sir.

16 Q. And then it changed later to 3:00 p.m.; is that correct?

17 A. After two years, yes, sir.

18 Q. Are you sure it was after two years and not after a few
19 weeks?

20 A. No. After the two years.

21 Q. Who was at the restaurant when you arrived to start your
22 shift?

23 THE INTERPRETER: Repeat, please.

24 Q. Who was at the restaurant when you arrived to start your
25 shift?

h3g6pin22

Jaquez - cross

1 A. Angel was there, Renato, every now and then Peter, and the
2 same way as Maria and the mother of Peter and Maria, sometimes
3 they were also there.

4 Q. I believe you testified earlier that Peter and Maria would
5 be in three days a week but not necessarily at the same time;
6 correct?

7 A. They were always there. They would always be working at
8 the restaurant. And Peter would leave and would give us orders
9 specifically for Tuesdays and Wednesdays. And he would go home
10 and Maria would close the restaurant.

11 Q. I am not sure about your testimony. I thought you
12 testified earlier that Peter was not there all the time and
13 neither was Maria because they only worked three days a per
14 week?

15 A. Yes. I said that earlier. I said that at the beginning,
16 but I am explaining to you that those two days he would go to
17 make his wine orders, that the ones from the company would sit
18 there to drink with him, and then he would go.

19 Q. I may be more confused as to your answer. I am still not
20 clear. I think you said, Yes, Peter would be there three days
21 a week; is that correct?

22 A. Yes (in English).

23 Q. Please wait for your interpreter.

24 A. Sorry.

25 Q. No. Maria was there three days a week there working and

h3g6pin22

Jaquez - cross

1 Peter, also.

2 Q. Three days a week?

3 A. Yes, sir.

4 Q. So by definition Peter would not be there four days a week;
5 can we agree on that?

6 A. I didn't understand the question.

7 Q. If you are saying Peter was there three days a week, that
8 means he wasn't there four days a week; correct?

9 A. With the exception of Mondays. I mean, Sundays because
10 that was his day off, and Mondays.

11 Q. So you are talking about there are two other workdays that
12 he was not there; correct?

13 A. On Sundays because on Mondays the restaurant was closed.

14 Q. Sir, was Renato Migliorini there every day?

15 A. Yes, before he became ill.

16 Q. Before he became ill, isn't it true he was there seven days
17 a week?

18 THE COURT: Seven or several?

19 MR. KUBLANOVSKY: Seven.

20 Q. If you know.

21 A. Peter's father?

22 Q. Yes. Isn't it true that Renato Migliorini was at the
23 restaurant the entire time?

24 A. I do not know what to tell you about Mondays because
25 Mondays I would never go there to the restaurant then.

h3g6pin22

Jaquez - cross

1 Q. Fair enough. But for the other six days fair to say
2 Mr. Renato Migliorini was there?

3 A. Yes, sir.

4 Q. Thank you.

5 Sir, did you ever place any food orders with vendors?

6 A. No, never.

7 Q. Whose job was that?

8 A. Peter's and Renato's.

9 Q. Do you know if Angel sometimes would place orders?

10 A. No, no.

11 Q. Is your testimony that Angel Guayllasac did not place food
12 orders with vendors?

13 A. Me, when I was always in the kitchen, my job was -- I would
14 be at the kitchen and I would start preparing my line for
15 service for the clients.

16 Q. So you don't know one way or another whether Angel
17 Guayllasac placed orders?

18 A. As I told you already, Peter and Renato were the ones who
19 would place the orders. My job was the kitchen.

20 Q. Did you have a key to the restaurant?

21 A. No, never.

22 Q. Earlier you said that I believe Renato, Peter, or Maria
23 paid you your wages; is that correct?

24 THE INTERPRETER: Waiters; is that what you said, sir?

25 MR. KUBLANOVSKY: Paid you your wages.

h3g6pin22

Jaquez - cross

1 THE INTERPRETER: Thank you.

2 A. Yes, sir.

3 Q. When you say, "paid you your wages," do you mean they
4 handed you cash on a weekly basis?

5 A. Yes, sir.

6 Q. You testified earlier that you believed that Maria
7 Migliorini was stealing tips; is that right?

8 A. Yes, sir, I said that.

9 Q. And based on the fact that you saw Ms. Migliorini count
10 tips from the tip box and put the cash -- some cash into her
11 pocket; correct?

12 A. Yes, sir. I would see her every day.

13 Q. Every day?

14 A. With the exception of Mondays, which was my day off.

15 Q. Whose job was it to pay out -- to hand out the tips at the
16 restaurant to the tipped employees?

17 A. The two, Peter and Maria.

18 Q. Do you know what Maria did with the cash you saw her put
19 into her pocket?

20 A. Yes. She would go and take it out of her pocket and she
21 would place it in her purse.

22 Q. Maria was waitress at the restaurant, wasn't she?

23 A. Yes, sir. Excuse me. Supposedly, allegedly so.

24 Q. Do you know how the tips were calculated at the restaurant?

25 A. Well, I do not know how they were calculated, but I do know

h3g6pin22

Jaquez - cross

1 that she took money from there.

2 Q. Do you know how the credit cards tips were calculated?

3 A. Well, from what I could observe, the only one who would
4 take out, calculate that from the credit cards was Peter most
5 of the times.

6 Q. What about the other times?

7 A. I did not understand the question.

8 Q. You said Peter most of the time. Who else did it the rest
9 of the time?

10 A. Maria. Specifically on Sundays when he didn't work, she
11 was the one in charge of the business and she would calculate
12 these things.

13 Q. You testified she would calculate the tips; but you don't
14 know how they were calculated, do you?

15 A. Tell him that I am going to answer to him, but I am not
16 going to be making a rude or bad answer to you.

17 I would see her taking money out of the box, but I
18 never asked her and it was not my job and it was nothing about
19 that I had to worry about.

20 Q. Thank you.

21 A. Or important for me.

22 Q. You said that Peter and Maria worked three days a week
23 respectively yet you said they made all of the decisions at the
24 restaurant even working three days a week; is that your
25 testimony?

h3g6pin22

Jaquez - cross

1 A. During the beginning they worked three days. But
2 afterwards and then towards the year -- almost a year -- almost
3 towards the end of a year, then they were in charge of the
4 restaurant. But during the first two years, Renato was always
5 there, and then at those times they would go through days per
6 week specifically as I said so.

7 Q. Sir, what would you do when you finished your shift at the
8 restaurant?

9 A. Tell him again I am going to answer that question to him
10 because he already previously made that question to me. Clean
11 my station, clean up the refrigerator where the food was
12 placed, clean the top part of the refrigerator which was made
13 of wood, and to brush it off, and to clean up my stove.

14 Q. Then what did you do?

15 A. To wait for them to give me the orders so that I could
16 leave.

17 Q. What was there left to do after you finished cleaning that
18 you had to wait for them to tell you what to do?

19 A. In what sense are you asking this question from me? What
20 do you mean by it?

21 Q. I am just asking the question, sir, what did you do after
22 you finished cleaning up?

23 A. To wait for them to tell me -- to wait for Mr. Peter to
24 tell me that I could go home and then I could go home or to
25 wait for the ticket that Maria would send that the restaurant

h3g6pin22

Jaquez - cross

1 was closed so that I could go back home.

2 Q. Why did you leave the restaurant on February 7th, 2015?

3 A. Because Mr. Peter laid me off.

4 Q. Why did he lay you off?

5 A. Well, as I just explained to my attorney, he says -- I do
6 not know if he continues saying so -- that he is an emperor so
7 then we would have to do what he would say and we would have to
8 leave when he said so.

9 Q. Isn't it true you were fired because you came into a
10 crowded dining area, showed Mr. Migliorini your middle finger
11 and yelled expletives at him?

12 A. The finger I did show it to him. But expletives, I never
13 said those. I am a decent man and I never use those words and
14 he knows that.

15 Q. Sir, can you turn to Exhibit C in defendants' exhibits?

16 THE INTERPRETER: Again, he is pointing somewhere.

17 A. Where, sir?

18 Q. Sir, this is a document. It is plaintiff's Rule 56
19 counterstatement. It was submitted by your attorney in
20 opposition to defendants' motion for summary judgment.

21 THE COURT: Slow down.

22 THE INTERPRETER: Do you recognize this document?

23 MR. KUBLANOVSKY: Well, I didn't get there yet.

24 THE COURT: What is your question?

25 Q. My question is -- can you please turn to page 10 of this

h3g6pin22

Jaquez - cross

1 document.

2 A. I do not understand anything about that.

3 THE COURT: Let's just move on.

4 A. Page 10.

5 Q. Page 10 at the top. It says paragraph 42. This was a
6 statement from defendants that says, "On February 7, 2015,
7 Mr. Jaquez on his way out from the restaurant and in the middle
8 of the restaurant's dining area turned to Peter Migliorini,
9 yelled various vile obscenities at him, and gestured to him
10 with his middle finger."

11 Do you see in response it says, Agree?

12 A. Yes.

13 Q. Do you understand that that is your counsel agreeing to
14 that statement?

15 A. Yes.

16 MR. KUBLANOVSKY: No further questions, your Honor.

17 THE COURT: Any further questions?

18 MR. ELLIS: No, your Honor.

19 THE COURT: Thank you, sir. You can step down.

20 (Witness excused)

21 THE COURT: Let's take a 10-minute break.

22 Before we do that, do you have anything further, or
23 are you going to rest?

24 MR. ELLIS: Plaintiffs rest.

25 THE COURT: Let's take a 10-minute break.

h3g6pin22

Ortiz - direct

1 MR. KUBLANOVSKY: Before we break, there is another
2 reminder. I know Mr. Migliorini has to leave around 4:00. Mr.
3 Ortiz, who we have a translator here for as the next witness is
4 okay so we may be able to stay past 4:00. I wanted to make the
5 Court aware.

6 THE COURT: Who are you calling next?

7 MR. KUBLANOVSKY: Fernando Ortiz.

8 THE COURT: I would like to finish him today.

9 MR. KUBLANOVSKY: As would I, your Honor.

10 THE COURT: We're going to continue even if
11 Mr. Migliorini has to leave.

12 (Recess)

13 THE COURT: You may be seated.

14 Mr. Kubanovsky.

15 MR. KUBLANOVSKY: Thank you, your Honor.

16 We would like to call Fernando Ortiz to the stand.

17 THE COURT: Yes.

18 (Interpreter sworn)

19 FERNANDO ORTIZ,

20 called as a witness by the Plaintiffs,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. KUBLANOVSKY:

24 Q. Good afternoon, Mr. Ortiz.

25 A. Good afternoon.

h3g6pin22

Ortiz - direct

1 Q. Can you please state your name and address for the record.

2 A. Fernando Ortiz. My address is 401A Kennedy Boulevard,
3 Fairview, New Jersey.

4 Q. Where were you born and raised?

5 THE INTERPRETER: Please repeat for the interpreter.

6 Q. Sir, where were you born and raised?

7 A. Dominican Republic.

8 Q. How long have you lived in the United States?

9 A. Almost 25 years.

10 Q. Sir, where do you currently work?

11 A. Piccolo Angolo.

12 Q. When did you start working at Piccolo Angolo?

13 A. January 14th, 1993.

14 Q. What kind of restaurant is Piccolo Angolo?

15 A. Italian.

16 Q. Where is it located?

17 A. 621 Hudson.

18 Q. In Greenwich Village?

19 A. Yes.

20 Q. Relative to the size of this courtroom, how big is the
21 restaurant?

22 A. I would say like a fourth.

23 Q. A quarter of the size?

24 A. Fourth or maybe less than that.

25 Q. How many tables does it have to seat customers?

h3g6pin22

Ortiz - direct

1 A. 23.

2 Q. What were you hired to do at the restaurant?

3 A. As a waiter.

4 Q. Is that still your position?

5 A. Correct.

6 Q. When you started at Piccolo Angolo, who were the owners at
7 the time?

8 A. Renato.

9 Q. That is Renato Migliorini?

10 A. Yes.

11 Q. Did you know if there were any other owners at the time?

12 A. Yes.

13 Q. Who else?

14 A. His brother, Mario.

15 Q. What was your work schedule when you first started?

16 A. Came in at 4:00 p.m. in the afternoon until 11:00 p.m.

17 Tuesday, Wednesday, and Thursday. And Friday and Saturday,
18 4:00 to midnight. And Sunday, 3:00 until 10:00.

19 Q. During that time what were the operating hours for the
20 restaurant?

21 A. Tuesday, Wednesday, and Thursday, 5:00 p.m. to 11:00 p.m.
22 in the evening. Friday and Saturday, 5:00 to 12:00. And
23 Sunday, 4:00 to 10:00.

24 Q. Did the restaurant ever close early?

25 A. Many times.

h3g6pin22

Ortiz - direct

1 Q. Were employees allowed to leave when the restaurant closed
2 early?

3 A. Sure.

4 Q. Did the employee still be paid their regular wages even
5 though they left early?

6 A. Normally.

7 Q. What were your responsibilities as a waiter?

8 A. To assure that the room was correctly set up, the tables,
9 and the wine and everything. Everything else.

10 Q. Did that include serving customers?

11 A. Yes.

12 Q. Did any of the plaintiffs in this action work at Piccolo
13 Angolo when you started working there?

14 THE INTERPRETER: Can you please repeat? The
15 interpreter didn't hear.

16 Q. Did any of the plaintiffs in this action work at Piccolo
17 Angolo when you started working there?

18 A. No.

19 Q. Did any of the plaintiffs in this action start working at
20 Piccolo Angolo after you?

21 A. Yes.

22 Q. Which of the plaintiffs worked with you early on in the
23 restaurant when you were working there?

24 A. Angel Guayllasac.

25 Q. What was he hired to do at the beginning?

h3g6pin22

Ortiz - direct

1 A. As a dishwasher.

2 Q. Did his job ever change over time?

3 A. Yes.

4 Q. What other positions did he hold?

5 A. He went to the salad area and later on as a cook.

6 Q. Do you know if he ever operated as a kitchen manager?

7 A. Yes.

8 Q. So he was in charge of managing the kitchen?

9 MR. ELLIS: Objection. Leading, your Honor.

10 THE COURT: I will let it stand. Do less leading.

11 A. Yes.

12 Q. During the time you worked at the restaurant and before
13 Renato Migliorini's death, who was the boss at the restaurant?

14 A. Renato is.

15 Q. Before Mr. Renato Migliorini passed away, was there any
16 other boss at the restaurant?

17 A. No.

18 Q. Who did the employees at the restaurant report to?

19 A. Renato.

20 Q. Did that include you?

21 A. Sure.

22 Q. Did it include Peter and Maria Migliorini as well?

23 A. Sure.

24 Q. Is that because they were also employees at the restaurant?

25 A. That is the way he considered it.

h3g6pin22

Ortiz - direct

1 Q. So that it is clear my questions from this point all
2 concern the time period before Renato Migliorini's death.

3 THE INTERPRETER: Before?

4 MR. KUBLANOVSKY: Before.

5 Q. Did Peter or Maria Migliorini have the power to hire or
6 fire employees?

7 A. No, no.

8 Q. Who did?

9 A. Renato.

10 Q. By the way, did there come a time when Mario or Costanzo
11 Migliorini was no longer an owner of the restaurant?

12 A. Would you repeat the question, please?

13 Q. Sure.

14 Was there a time when Mario Migliorini or Costanzo,
15 Migliorini stopped being an owner of the restaurant?

16 A. Yes.

17 Q. Do you recall when that would have been?

18 A. Yes, yes.

19 Q. When?

20 A. I don't remember exactly the date, but there was a time
21 when they were no longer partners. They were not together.

22 Q. Would this have been around 2005 or 2006. Does that
23 refresh your recollection?

24 A. Yes, yes. Approximately 2005.

25 Q. Who set employee compensation at the restaurant?

h3g6pin22

Ortiz - direct

1 A. Renato.

2 Q. Who set employee work schedules at the restaurant?

3 A. Renato.

4 Q. Who disciplined employees at the restaurant?

5 A. Renato.

6 Q. When any of the employees had a question about their jobs,
7 who would they go to?

8 A. Renato.

9 Q. Did that include you?

10 A. Of course.

11 Q. Did that include Peter and Maria Migliorini as well?

12 A. Yes.

13 Q. So if an employee had a question about his or her
14 compensation, who would they go to?

15 A. Renato.

16 Q. How often was Renato Migliorini at the restaurant during
17 the week?

18 A. Well, approximately Renato got there at about 11:00, 11:30.
19 Something like that. Sometimes he would remain until 9:30 and
20 sometimes until closing.

21 Q. How many days per week was he at the restaurant?

22 A. Six.

23 Q. Do you know if he would go in Mondays when the restaurant
24 was closed?

25 A. Yes.

h3g6pin22

Ortiz - direct

1 Q. In the time that you worked at the restaurant and aside
2 from Renato Migliorini's illness before he passed away, did
3 Renato Migliorini ever take a vacation from the restaurant?

4 A. No.

5 Q. By the way, did you ever make a loan to the restaurant?

6 THE INTERPRETER: Will you repeat that, please?

7 Q. Did you ever make a personal loan to the restaurant?

8 A. Never.

9 Q. Sir, was Mr. Guayllasac's position at the restaurant
10 different from the other employees?

11 A. Yes.

12 Q. How so?

13 A. He would arrive first before anybody else and he would take
14 care of the inventory in the basement and looked into whether
15 there was meat needed. He looked into everything.

16 Q. Do you know if he ever placed orders with vendors?

17 A. No.

18 Q. Do you know if he ever communicated to Renato Migliorini
19 what was in the inventory of the restaurant?

20 A. Always.

21 Q. Did you understand that he did so for Renato Migliorini to
22 be able to order food for the restaurant?

23 A. Yes.

24 Q. And supplies for the restaurant?

25 A. Yes.

h3g6pin22

Ortiz - direct

1 Q. Did Migliorini Renato rely on Mr. Guayllasac for that
2 information?

3 A. Yes.

4 Q. What other responsibilities did Mr. Guayllasac have?

5 A. Well, it was everything, inventory, cook, yes, that.

6 Q. Did he have a key to the restaurant?

7 A. Yes.

8 Q. Would he sometimes open the restaurant in the morning?

9 A. Yes.

10 Q. Would you sometimes help close the restaurant in the
11 evening?

12 A. Yes.

13 Q. Was he viewed as the second in command to Renato
14 Migliorini?

15 MR. ELLIS: Objection, leading.

16 THE COURT: Sustained.

17 Don't answer that question.

18 MR. KUBLANOVSKY: I will ask it differently.

19 Q. How would you characterize Mr. Guayllasac's position
20 relative to Renato Migliorini?

21 A. Could you please repeat the question?

22 Q. Sure.

23 How would you characterize Mr. Guayllasac's position
24 relative to that of the owner, Renato Migliorini?

25 A. It was a very cordial relationship. Very familial like.

h3g6pin22

Ortiz - direct

1 Q. With respect to the business side, did you view him as part
2 of the management team?

3 A. Yes.

4 Q. Did any of the other plaintiffs in this action have a key
5 to the restaurant?

6 A. No.

7 Q. Did you?

8 A. Not at that time.

9 Q. Do you have a key now?

10 A. Yes.

11 Q. When did the kitchen open each day to start serving
12 customers?

13 THE INTERPRETER: Will you please repeat?

14 Q. When did the kitchen open each day to start serving
15 customers?

16 A. 5:00 p.m. Yes, 5:00.

17 Q. Do you know when the first reservation was generally made
18 each day at the restaurant?

19 A. Generally 5:30.

20 Q. Would the restaurant ever start serving customers prior to
21 5:00 p.m.?

22 A. Never.

23 Q. What time did the kitchen usually close each night?

24 A. 10:30 and on Sundays 9:30.

25 Q. Is that when the kitchen stopped taking food orders?

h3g6pin22

Ortiz - direct

1 A. Yes.

2 Q. After the kitchen closed, what were Mr. Guayllasac's
3 responsibilities?

4 MR. ELLIS: Objection. Basis, foundation.

5 THE COURT: Overruled. You can cross-examine on that.

6 A. Could you repeat the question, please?

7 Q. After the kitchen closed, what were Mr. Guayllasac's
8 responsibilities?

9 A. To clean his station and the kitchen and then to leave the
10 order that is what was needed so that Renato could order the
11 items.

12 Q. Would you see him clean his station in the evenings?

13 A. Yes.

14 Q. Would you ever see him tell Mr. Renato Migliorini the
15 orders for the next day?

16 A. Yes.

17 Q. Do you know how long it would normally take him to clean up
18 each night?

19 A. No more than 20 minutes.

20 Q. Do you know what he did after he finished cleaning up?

21 A. Yes.

22 Q. What did he do?

23 A. He would go down, change, and then when he came up he left
24 the order.

25 Q. So what time did he usually leave in the evenings?

h3g6pin22

Ortiz - direct

1 A. 11:20. No later than 11:20 during the week. Friday and
2 Saturday, 12:15, 12:20. And Sunday, 10:20.

3 MR. KUBLANOVSKY: Can I go off the record really
4 quickly?

5 THE COURT: Yes.

6 (Pause)

7 Q. Did Mr. Guayllasac ever stay longer in the evenings?

8 A. Yes.

9 Q. What would he be doing?

10 A. Sometimes it was a soccer game or a baseball game, he
11 wanted to drink a glass of wine or a beer.

12 Q. Would he do that with any of the other employees?

13 A. With all of them. Anybody who wanted to.

14 Q. This was after they finished their shifts at the
15 restaurant?

16 A. Yes.

17 Q. Did the restaurant ever charge them for the beer and wine
18 that they drank?

19 A. No.

20 Q. What about the food that they ate?

21 A. Neither.

22 Q. Who is Luis Pineda?

23 A. He was a coworker out in the room as a busboy.

24 Q. When did Mr. Pineda start working at the restaurant?

25 A. We could say 2002, 2003.

h3g6pin22

Ortiz - direct

1 Q. After you started working, though?

2 A. Yes.

3 Q. Do you know who hired Mr. Pineda?

4 A. Yes.

5 Q. Who?

6 A. Renato.

7 Q. How long did Mr. Pineda work at Piccolo Angolo?

8 A. A little bit more than 11 years.

9 Q. What responsibilities did he have at the restaurant?

10 A. He had to make sure that the wine bottles of the house were
11 full and that the tables would have water served and they would
12 be clean by the time the restaurant opened.

13 Q. Did you work closely with Mr. Pineda?

14 A. Yes.

15 Q. Did you work closely with all of the employees at the
16 restaurant?

17 A. Yes.

18 Q. Do you know what time Mr. Pineda usually started working
19 each day at the restaurant?

20 A. Yes.

21 Q. Can you please tell us what times he started working during
22 the week?

23 A. At 4:00 p.m.

24 Q. Do you know what time Mr. Pineda usually left the
25 restaurant?

h3g6pin22

Ortiz - direct

1 A. Yes.

2 Q. When?

3 A. Since we had different hours during the week and because
4 Friday and Saturday the days were longer, I would say that it
5 would be 45 minutes after the kitchen closed.

6 Q. Did the kitchen close approximately half an hour before the
7 restaurant closed?

8 MR. ELLIS: Objection, leading.

9 THE COURT: Sustained.

10 Q. Sir, what time did the kitchen close?

11 A. 11:00. But Friday and Saturday, it closed at 11:30. And
12 on Sundays at 10:00.

13 Q. How long would it normally take Mr. Pineda to clean up each
14 night?

15 A. I was not in charge of cleaning. So only that the table
16 should be properly set. So at the end there were not so many
17 people so there were not so many tables that had to be set.

18 Q. So what did he do after he finished cleaning up or setting
19 the tables?

20 A. Sometimes he would leave immediately and sometimes he would
21 stay with the guys, with us.

22 Q. Could he stay voluntarily?

23 A. Yes, yes.

24 Q. Would all the employees stay voluntarily?

25 A. Yes.

h3g6pin22

Ortiz - direct

1 Q. Who is Eddie Jaquez?

2 A. He came in at work as a cook and he was the last employee
3 who came there.

4 Q. What do you mean he was the last employee who came there?

5 A. From the entire group of employees, he is the one who had
6 the least amount of time working there.

7 Q. Thank you.

8 You may have said this, but when did Mr. Jaquez start
9 working at the restaurant?

10 A. 2011, 2012. Probably 2011.

11 Q. Who hired Mr. Jaquez?

12 A. Renato.

13 Q. What was Mr. Jaquez's position at the restaurant?

14 A. Cook.

15 Q. What responsibilities did he have?

16 A. Just cooking and to clean his station whenever he ended his
17 work.

18 Q. Did he have different cooking responsibilities than
19 Mr. Jaquez?

20 A. Yes.

21 Q. Did he make different dishes?

22 A. Yes.

23 Q. What did he prepare?

24 A. He was in charge of the meat at the boiler.

25 Q. What time did Mr. Jaquez usually start working each day at

h3g6pin22

Ortiz - direct

1 the restaurant?

2 A. 5:00.

3 Q. What time did he usually leave?

4 A. 11:20, 11:25 when he didn't remain there with the group.

5 Q. What were Mr. Jaquez's responsibilities before leaving for
6 the night?

7 A. Just to clean his station, and he was ready to leave.

8 Q. How big was his station relative to the witness box that
9 you are in?

10 A. You mean his alone? Because the kitchen is small. You
11 know, everything is altogether there.

12 Q. His alone.

13 A. His alone, well, probably like this size.

14 Q. About 2 to 3 feet in length?

15 A. The width of the desk. A little bit smaller than the desk.

16 Q. How long would it take him to clean up each night?

17 MR. ELLIS: Objection. Calls for speculation.

18 THE COURT: Overruled.

19 He can answer.

20 THE WITNESS: Can I answer?

21 THE COURT: Yes.

22 A. 20 -- 15 to 20 minutes.

23 Q. Would you see him cleaning up each night?

24 A. Yes.

25 Q. Who is Israel Arizmendi?

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Ortiz - direct

1 A. He was another employee.

2 Q. When did Mr. Arizmendi start working at the restaurant?

3 A. He was there two times.

4 Q. What is the first time he was there?

5 A. The first time I would say 1999, yes.

6 Q. When was the second period?

7 A. One year after that.

8 Q. Do you know why there was a gap between 1999 and when he
9 started working at the restaurant again?

10 MR. ELLIS: Objection, your Honor.

11 MR. KUBLANOVSKY: I am asking if he knows.

12 THE COURT: Do I care?

13 MR. KUBLANOVSKY: You may not.

14 THE COURT: Just move on.

15 MR. KUBLANOVSKY: That is a better question, your
16 Honor.

17 Q. Who hired Mr. Arizmendi?

18 A. Renato.

19 Q. How long did Mr. Arizmendi work at Piccolo Angolo in total?

20 A. Three years.

21 Q. What was his position at the restaurant?

22 A. Salad man. He made salads and then to wash the pots and
23 pans.

24 Q. Did he work in the kitchen?

25 A. Yes.

h3g6pin22

Ortiz - direct

1 Q. Did he work in the kitchen with Mr. Jaquez and
2 Mr. Guayllasac?

3 A. Yes.

4 Q. What time did Mr. Arizmendi usually start working each day
5 at the restaurant?

6 A. He came in a little later. He would start about 5:15, 5:30
7 because he had another job. And that was the condition, that
8 when he would leave the other job, then he would come.

9 Q. So Mr. Arizmendi had another job that he worked at before
10 coming to the restaurant?

11 A. Yes.

12 Q. So he would start later at the restaurant because he
13 arrived later coming from his other job?

14 A. Yes.

15 Q. What time did Mr. Arizmendi usually leave?

16 A. Before Angel and Eddie. His station was easy to clean.

17 Q. Do you know how long it would usually take him to clean his
18 station?

19 A. No more than 15 minutes.

20 Q. Would you ever see him cleaning his station?

21 A. Yes.

22 Q. Did Mr. Arizmendi have any other responsibilities before
23 leaving?

24 A. No.

25 Q. Who is Robinson Ortega Diaz?

h3g6pin22

Ortiz - direct

1 A. He was the one who washed the dishes.

2 Q. Did he work at Piccolo Angolo?

3 A. Yes.

4 Q. He was a dishwasher at Piccolo Angolo?

5 A. Yes.

6 Q. When did Mr. Diaz start working at the restaurant?

7 A. 2013.

8 Q. Who hired Mr. Diaz?

9 A. Renato.

10 Q. Was Renato Migliorini alive at the time Mr. Diaz worked at
11 the restaurant?

12 A. Yes.

13 Q. Is Mr. Diaz related to Mr. Jaquez?

14 A. Yes.

15 Q. What time did Mr. Diaz usually start working each day at
16 the restaurant?

17 A. At 2:00 because he had to clean the floor.

18 Q. What time did he usually leave?

19 A. The time would depend on the amount of people that was
20 still there in the room, but he would leave together with Luis.
21 When nobody was there in the room, they would leave.

22 Q. Luis Pineda?

23 A. Yes.

24 Q. Do you know how long it would normally take Mr. Diaz to
25 clean up each night?

h3g6pin22

Ortiz - direct

1 A. After he received all the glasses and all the plates, it
2 would take him 10 minutes.

3 Q. How much were you paid at the restaurant?

4 A. Me, 450 a week plus tips.

5 Q. How did you receive your wages?

6 A. Cash.

7 Q. Who handed you your wages?

8 A. Generally Renato or sometimes it would be Peter or Maria.

9 Q. Did you ever complain about your compensation at the
10 restaurant?

11 A. No.

12 Q. Did any of the plaintiffs ever complain to you about their
13 compensation at the restaurant?

14 A. No.

15 Q. Can you please describe to us what happened at the
16 restaurant on the evening of February 27th, 2015?

17 A. That was a day that started normally. We were all talking.
18 We were just conversing. And as a matter of fact Eddie Jaquez
19 told me he had a family party that evening and he invited me to
20 go to his home. I told him that I would probably not be able
21 to go because I left later. And then he told me as soon as he
22 ended, he would go directly to his home. And if I wanted to
23 go, I could go with his cousin, Robinson. And then we were
24 working the entire day normally.

25 It was a very, very busy day. And around 10:30 we sat

h3g6pin22

Ortiz - direct

1 down the last reservation, and I placed an order 15 minutes
2 after. That means 10:45. And when I placed the order, he look
3 at me in a nice way, but didn't say anything.

4 And approximately about 11:20 they were communicating
5 between themselves and suddenly they all left the kitchen and
6 Peter was in the restaurant that night and said, Guys, what is
7 going on? And Mr. Jaquez told him what -- I cannot repeat the
8 word, but he also made a signal with the finger in the middle
9 of the room that was full of customers. And at that moment
10 Peter said, I have not fired all of you, but you are fired
11 right now. And they left. They went downstairs. I went to
12 talk to them, trying to have at least a group come back and
13 they said no. And Eddie asked me, And you, are you going to
14 stay?" And I said, Yes, I am responsible for my actions. If
15 you want to leave, I have nothing to tell you. That's it.

16 Q. Did any of the plaintiffs tell you why they were leaving?

17 A. No.

18 Q. Did you ever tell any of the plaintiffs that you were an
19 owner in the company and that is why you were not leaving?

20 A. No. No. No.

21 Q. Are you an owner in the company?

22 A. No. No.

23 Q. After Renato Migliorini died, who became your boss?

24 A. Peter.

25 Q. Did you consider Peter your boss before Renato Migliorini

h3g6pin22

Ortiz - cross

1 died?

2 A. No. No.

3 Q. Did you consider Maria your boss at any time?

4 A. No.

5 Q. Did you ever hear Peter Migliorini call himself the emperor
6 of the restaurant?

7 A. Never.

8 Q. Did you ever hear him tell that to any employee?

9 A. Never.

10 MR. KUBLANOVSKY: No further questions.

11 THE COURT: Mr. Ellis.

12 MR. ELLIS: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. ELLIS:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. You testified earlier that you were paid \$450 a week; is
18 that correct?

19 A. Plus tips.

20 Q. Plus tips.

21 How much are your tips on an average day?

22 A. Average, I would say 200, 220.

23 Q. Do you know how much the restaurant makes on an average day
24 in tips?

25 A. No. Because it was -- it changed a lot. Even with the

h3g6pin22

Ortiz - cross

1 seasons, it changes a lot.

2 Q. Sure. What is the most you have seen the restaurant make
3 in one day with tips?

4 A. 650 total.

5 Q. What is the least you have seen the restaurant make in a
6 day in tips?

7 A. 180 total.

8 THE COURT: How much did you say?

9 THE INTERPRETER: 180, your Honor.

10 THE COURT: 180?

11 THE INTERPRETER: Yes.

12 Q. Who gets to keep the tips?

13 A. Well, there was a way to divide the tips. 15 percent would
14 go to Luis.

15 Q. Is that 15?

16 A. 15. One, five.

17 And the rest was divided among Peter, Maria and me.

18 It all had to do with whether Peter was working at the tables
19 or not.

20 Q. So if Peter was working at the tables, how much would you
21 get?

22 THE INTERPRETER: You singular or plural?

23 MR. ELLIS: Mr. Ortiz.

24 A. One-third of what remained after the 15 percent.

25 Q. If Peter wasn't working the tables, how much would you

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Ortiz - cross

1 make?

2 A. I would get 50 -- 50 percent after the 15 was taken out.

3 Q. Do you consider yourself a regular employee in the
4 restaurant?

5 A. Yes.

6 Q. You've been there the longest; isn't that correct?

7 A. Yes.

8 Q. Do you think you have seniority at the restaurant?

9 A. No.

10 Q. You don't think that because you have been there the
11 longest that you occupy a special role in the restaurant?

12 A. No. Even more so. If there was anything that was needed
13 in the kitchen, I would say, Well, what do you need from me?
14 That means if I wasn't busy at the time.

15 Q. Did you punch in and out every day?

16 A. No.

17 Q. Did any of the other employees?

18 A. No.

19 Q. Did Peter and Maria before Renato died?

20 A. No.

21 Q. When you are paid, are you paid in cash?

22 A. Yes.

23 Q. So you are not given a pay stub, nothing like that?

24 A. Oh, yes. Yes.

25 Q. So you get a pay stub?

h3g6pin22

Ortiz - cross

1 A. Yes. A pay stub.

2 Q. Do you know if there are deductions made from your wages
3 for taxes and social security and that type of thing?

4 A. Yes. Because I see that in the W-2.

5 Q. When Mario was an owner in the restaurant, what was his
6 role?

7 A. Mario would prepare the sauces, the different types of
8 sauces that were used. He would prepare some specials that had
9 to be prepared in advance.

10 Q. What about after Mario left the restaurant, who would
11 prepare those sauces and those specials?

12 A. Renato and Angel would do them. They had a good
13 relationship.

14 Q. Did Peter and Maria's involvement in the restaurant
15 increase after Mario left?

16 THE INTERPRETER: After Mario left?

17 MR. ELLIS: Yes.

18 A. No.

19 Q. So when Mario was there he was one of your bosses; right?

20 A. No. I didn't see Mario. No, Mario would arrive at about
21 4:00 a.m. and then at the latest, 10:00, 10:30 a.m., he would
22 leave. That's why angel had a key to get in. Because when it
23 was 11:00, 11:30, the restaurant was closed because Mario had
24 left already.

25 Q. When did Peter start working at the restaurant?

h3g6pin22

Ortiz - cross

1 A. 1996. But occasionally he used to come.

2 Q. When did Maria start working at the restaurant?

3 A. Maria from the beginning.

4 Q. Did Peter's role in the restaurant increase in or around
5 2005?

6 A. No.

7 Q. Did Maria's role increase at that time?

8 A. Neither.

9 Q. Do you consider Peter part of management?

10 A. Right now?

11 Q. Yes.

12 A. Yes.

13 Q. When did you begin to consider him part of management?

14 A. After Renato died.

15 Q. Do you consider Maria part of management?

16 A. No.

17 Q. Not now? Not ever?

18 A. No.

19 Q. Do you consider Angel Guayllasac part of management?

20 A. Yes.

21 Q. Why is that? Why is he a manager and not Peter?

22 A. Well, at that time Angel was in charge of seeing what was
23 needed -- everything that was needed at the restaurant. He
24 would prepare a list and at night he would get together with
25 Renato and would give him the list or would send it to him.

h3g6pin22

Ortiz - cross

1 Q. So that is why you consider him part of management?

2 A. Sure.

3 Q. Did you ever see Angel hire anyone?

4 A. No.

5 Q. Did he have that power?

6 A. No.

7 Q. Did he have the power to fire anyone?

8 A. No.

9 Q. Did he have the power to set anyone's schedule?

10 A. No.

11 Q. Who had those powers?

12 A. Renato did.

13 Q. After Renato died, who did?

14 A. Peter.

15 Q. Maria never had those powers?

16 A. No.

17 Q. I want to touch on Robinson Ortega.

18 He was the dishwasher; right?

19 A. Yes.

20 Q. You said that Renato hired him in about 2013; is that
21 right?

22 A. Yes.

23 Q. Are you sure about that?

24 A. Not entirely about the date.

25 Q. But the date of 2013 you are certain?

h3g6pin22

Ortiz - cross

1 A. Well, 2013. Well, I am almost sure it was in 2013.

2 Remember that since I don't hire anybody, I don't keep the
3 control of the exact dates of when every employee comes in.

4 Q. You are certain that it was Peter -- excuse me, Renato who
5 hired Robinson?

6 A. Renato 100 percent.

7 MR. ELLIS: I would like to mark Plaintiffs'
8 Exhibit 15.

9 May I approach?

10 THE COURT: Yes.

11 A. Is that for me?

12 Q. Yes.

13 MR. ELLIS: Your Honor, for the record this is the
14 affidavit of Peter Migliorini dated September 4, 2016. This is
15 docketed in this matter at No. 46.

16 MR. KUBLANOVSKY: I will object to the witness
17 reviewing this exhibit. It is not his affidavit. He is a
18 nonparty to this case.

19 THE WITNESS: This is not mine.

20 THE COURT: What are you inquiring of this witness?
21 What are you going to ask him?

22 MR. ELLIS: I am going to ask him about paragraph 11.

23 THE COURT: What are you going to ask him about?

24 MR. ELLIS: About Mr. Diaz and who hired Mr. Diaz.

25 THE COURT: What are you going to ask him about the

h3g6pin22

Ortiz - cross

1 document? What is your question?

2 MR. ELLIS: Why is he so certain about who hired Mr.
3 Diaz and when.

4 THE COURT: What does that have to do with that
5 document?

6 MR. ELLIS: The document contradicts the testimony,
7 your Honor.

8 THE COURT: I still don't know what you are going to
9 ask him. What is your question to this witness about this
10 document?

11 MR. ELLIS: My question to this witness would be: Is
12 Mr. Migliorini's testimony in this document accurate?

13 THE COURT: Pose your question and I will see if there
14 is an objection.

15 BY MR. ELLIS:

16 Q. Can you turn to page 3, paragraph 11, please.

17 THE COURT: I don't know what document you are talking
18 about because I don't have a copy.

19 MR. ELLIS: May I approach?

20 THE COURT: Yes.

21 What is your question? Ask the question and I will
22 see if there is an objection.

23 Q. It says here this is a sworn statement from Mr. Peter
24 Migliorini and he says that after his father's death he hired
25 Robinson Ortega Diaz.

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Ortiz - cross

1 Is Peter lying in this document?

2 MR. KUBLANOVSKY: I am going to object, your Honor.

3 THE COURT: I will sustain as to the form of the
4 question.

5 Q. Is Peter's testimony here accurate?

6 MR. KUBLANOVSKY: Objection, your Honor.

7 THE COURT: Overruled. He can answer.

8 A. What was the question?

9 Q. Is Peter's testimony here at paragraph 11 accurate that he
10 hired Robinson Ortega after Renato's death?

11 A. Well, I just finished telling or saying that I don't have
12 any control or I don't have any notation about who hires or who
13 does not and the exact dates because that is not my
14 responsibility.

15 Q. Is it possible that Peter hired Robinson before Renato
16 died?

17 A. I don't have an exact response because I do not recall. I
18 don't remember the exact date.

19 Q. Let's say it happened before Renato died. Is it
20 conceivable to you that Renato could have hired Robinson before
21 Renato died?

22 THE COURT: That assumes facts in evidence. That is
23 opposite to the document you gave him.

24 MR. ELLIS: Withdrawn, your Honor.

25 Q. You stated earlier that the kitchen closed on Sundays at

h3g6pin22

Ortiz - cross

1 and 10:00 p.m.; is that correct?

2 A. Yes. But then the last reservation is at 9:30.

3 Q. What time is the last reservation Tuesday to Thursday?

4 A. 10:30.

5 Q. That is the last reservation; correct?

6 A. Yes.

7 Q. What time is the last reservation on Friday and Saturday
8 11:00, 11:30.

9 Q. And then on Sunday, what time is the last reservation?

10 A. Sunday, 9:30.

11 Q. When all the plaintiffs quit on February 7th, why didn't
12 you quit with them?

13 A. I didn't have any reason to.

14 Q. Did you ever loan money to the business?

15 A. No.

16 Q. They never borrowed any amount of money from you?

17 A. No, never.

18 Q. When the restaurant closed in August for two weeks, were
19 you paid?

20 A. Yes. The base salary of course.

21 Q. Do you know what any of the plaintiffs were paid?

22 A. Yes. Well, I heard them say so.

23 Q. Who did you hear?

24 A. All of them. We all go together before we left for the
25 holidays or on vacation rather.

h3g6pin22

Ortiz - cross

1 Q. How much was Israel Arizmendi paid?

2 A. That was not my responsibility. I have no knowledge of
3 anyone or anybody.

4 Q. I thought you just said that you had all talked about this
5 and that you know how much they were paid?

6 A. No. No. No. I never said that I knew how much they were
7 paid. What I said is that they said I was paid and with this I
8 have for my vacation. They never said how much and I didn't
9 ask either.

10 Q. You don't know then how much any of the plaintiffs were
11 paid; is that correct?

12 A. I was not involved in payments.

13 Q. Who paid you your wages?

14 Just to clarify the time frame. After Renato died,
15 who paid you your wages on a weekly basis?

16 A. Peter did.

17 Q. Who paid you your wages when Renato was still alive?

18 A. Renato.

19 Q. Has it been 450 a week for the entire 20 plus years you
20 have been working there?

21 A. No. No. No. At the beginning it was less.

22 Q. What was it in the beginning?

23 A. I would say as far as I recall it would be 200 or 175.

24 Q. Is that per week?

25 A. Yes. We talking about 24 years ago.

h3g6pin22

Ortiz - cross

1 Q. When did it change to the 450 a week?

2 A. I would say approximately eight years ago, but in between
3 there was a time period when it changed and it was between 250
4 to 280.

5 Q. I want to go over your schedule again. I am looking at my
6 notes. It says you testified that on Tuesdays, Wednesdays and
7 Thursdays you worked 4:00 to 11:00; is that correct?

8 A. Yes.

9 Q. And then Friday and Saturday you worked 4:00 to 12:00; is
10 that correct?

11 A. Yes.

12 Q. Sundays you worked 3:00 to 10:00; is that correct?

13 A. No. 4:00 to 10:00.

14 Q. Oh, 4:00 to 10:00.

15 Do you receive breaks?

16 A. It was voluntary. All of us. For example, Eddie sometimes
17 he would leave. He would go outside to smoke a cigarette and
18 then he would come in. Logically we were not busy. Well, I
19 give you that example because he was the only one who smoked.

20 But also the other guys would leave, you know, when we
21 were not busy. One would go out and then come in just to
22 breathe fresh air.

23 Q. Do you know what time the restaurant opens?

24 A. 5:00 p.m.

25 Q. Is that every day that it open at 5:00 p.m.?

h3g6pin22

Ortiz - cross

1 A. Not on Sundays.

2 Q. What time does it open on Sunday?

3 A. 4:00.

4 THE COURT: Saturday or Sunday?

5 THE WITNESS: Sunday.

6 Q. What time does the restaurant close Tuesday through
7 Thursday?

8 A. The kitchen at 11:00, but the last reservation is taken at
9 10:30.

10 Q. But then the restaurant doesn't actually close until 11:00?

11 A. Well, if they already finished, if the order went out, they
12 already had to clean. They don't have to wait until it is
13 11:00 to start.

14 Q. Friday and Saturday what time does the kitchen close?

15 A. 11:30.

16 No, I am sorry. The Kitchen closes at 12:00, but the
17 last reservation is taken at 11:30. But that is occasionally.

18 Q. On Sunday what time does the kitchen close?

19 A. At 10:00 and the last reservation is made at 10:30.

20 THE INTERPRETER: Correction by the interpreter, 9:30.

21 Q. So is it accurate that you arrive at work about an hour
22 before the restaurant opens?

23 A. Yes. If I found parking earlier, I will be 15 minutes
24 earlier.

25 Q. If you what earlier?

h3g6pin22

Ortiz - cross

1 A. You see, I live in New Jersey and I have to drive to go to
2 work. If I find a parking spot before 4:00 p.m., then I park
3 and then I go directly to the restaurant.

4 THE COURT: How much more do you think you are going
5 to have?

6 MR. ELLIS: Not much longer. 10 minutes.

7 THE COURT: Let's try to see if you can wind up before
8 5:30.

9 MR. ELLIS: One moment, your Honor.

10 THE COURT: Yes.

11 BY MR. ELLIS:

12 Q. When you would arrive every day to work, who was at the
13 restaurant?

14 A. Employees?

15 Q. Yes.

16 A. Angel, the dishwasher was working at that time.

17 Q. That would be Robinson in this case?

18 A. Yes.

19 Q. So then Luis, Eddie, and Israel would arrive after you
20 already arrived; is that correct?

21 A. No. Just Israel.

22 Q. So everyone was already there except for Israel then?

23 A. Not when I arrived. Generally we arrived altogether.

24 Q. Who is "we"?

25 A. Eddie -- well, just Eddie and Luis. Because Israel came in

h3g6pin22

Ortiz - cross

1 later around 5:00. Angel and Robinson were already at the
2 restaurant at that time.

3 Q. When you testified earlier that Renato hired Robinson, were
4 you told to say that today?

5 A. No.

6 Q. Were you told to say anything today?

7 A. No. As a matter of fact that is why I don't have the dates
8 exactly. If anybody told me to say anything, I should remember
9 it.

10 Q. This isn't about the dates. If you went back into the
11 transcript, you said that you were absolutely certain that
12 Renato hired Robinson and you are shown a sworn affidavit from
13 Peter Migliorini and now you don't remember?

14 A. Well, I never said at any moment that I was totally sure.
15 As a matter of fact if I didn't remember exactly not even the
16 date, I couldn't remember exactly who hired him.

17 Q. Were you there when he was hired?

18 A. Sure I was.

19 Q. So you didn't see who hired him, but you were there?

20 A. I didn't say I did not see. I said I did not recall
21 because I don't hire the personnel.

22 Q. Well, you are there you can see what is going on in the
23 restaurant. It is a small place. It is a quarter of the size
24 of this courtroom.

25 A. I understand, but I am not a spy. I am not really looking

h3g6pin22

Ortiz - cross

1 out. I am always taking care of my job and my position.

2 Q. You can see what is going on. You can see who is in
3 charge. You can see who is hired and charged.

4 THE COURT: Mr. Ellis, this is not argument. It is
5 not making me any smarter.

6 Q. Did you actually see any of the plaintiffs hired by anyone
7 at Piccolo Angolo?

8 A. You are asking me whether I saw any papers or I saw
9 interviews or --

10 Q. Anything. If you saw anything.

11 A. Well, if there was any employee, obviously the person was
12 hired by the boss, the person who hired.

13 Q. So you would see that happen then?

14 A. Yes.

15 Q. So did you see Angel get hired?

16 A. Well, when I started, already Angel was hired three months
17 later.

18 Q. Did you see Luis get hired?

19 A. Well, to see him -- well, he came over there looking for a
20 job and he remained.

21 Q. Did you see who he spoke with?

22 A. Yes. Renato is the one who received him.

23 Q. Did Peter speak with him?

24 A. No. He wasn't there either.

25 Q. Did you see Robinson get hired?

h3g6pin22

Ortiz - cross

1 A. I do not recall.

2 Q. Did you see Eddie get hired?

3 A. Yes.

4 Q. Who hired Eddie?

5 A. Renato did.

6 Q. Did you see Israel get hired?

7 A. Yes.

8 Q. Who hired him?

9 A. Renato.

10 MR. ELLIS: Nothing further, your Honor.

11 THE COURT: Any further questions?

12 MR. KUBLANOVSKY: No, your Honor.

13 THE COURT: Thank you, sir. You can step down.

14 (Witness excused)

15 THE COURT: What time did you tell him to come back?

16 MR. KUBLANOVSKY: The earlier you want to start, the
17 better, your Honor.

18 THE COURT: 9:30. Maybe we can finish by lunchtime.

19 MR. ELLIS: Thank you, your Honor.

20 MR. KUBLANOVSKY: Thank you, your Honor.

21 THE COURT: See you at 9:30.

22 (Adjourned to March 17th, 2017 at 9:30 a.m.)

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